IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

A.O. No. 1320 of 2001

Date of decision : 20-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 20-7-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

A.O. No. 1320 of 2001
(Old A.O.No. 184 of 1982)

The Oriental Fire and General Insurance Company
Lucknow ... Appellant

Versus

1. Smt. Govindi Devi Widow of Late Sri Hayat Singh
2. Sri Kedar Singh
3. Kumari Manju
4. Kumari Nirmala
5. Kumari Kalawati
6. Kumari Hema
7. Sri Trilok Singh
   All son and daughter of Late Hayat Singh
   R/o Village Daoli Patti Goomdesh
   Post Office-Pool Hindola
   Tahsil – Champawat,
   District – Pithoragarh
8. Sri Nain Singh Driver
   R/o Sangaulla Patti Goomdesh
   Tahsil Champawat
   District – Pithoragarh
9. U.P.S.R.T.C., Lucknow
   through its General Manager ... respondents

Sri Rajesh Joshi-Brief Holder of Sri T.A. Khan, learned counsel for the appellant.
Sri A.M. Saklani, learned counsel for the respondents.

Hon'ble J.C.S.Rawat, J.

This is an appeal against the judgment and award dated 25.08.1982 passed by M.A.C.T./District Judge, Pithoragarh in Motor Accident Claim Case No. 2 of 1981 under Section 110-D of the Motor Vehicles Act.

Brief facts for the disposal of this appeal are that an application for the compensation was filed before the Tribunal u/s 110A of the Motor Vehicles Act, 1939

wherein it has been alleged that when the deceased was traveling in the offending bus No. U.S.R. 8374 on 04.12.1980 at about 7:30 a.m. and when the said offending bus reached 12 kms. From Tanakpur called Tipantop on Tanakpur-Lohaghat Motor Road, Pithoragarh, the bus No. U.S.R. 8374 belonging to opposite party-respondent No.9 met an accident. It was further alleged that the accident occurred due to the rash and negligent driving of the driver of the bus. The said bus fell down in a khud resulting the death of the several passengers including the deceased-Hayat Singh.

The said claim petition was contested by the U.P.S.R.T.C. alleging therein that the said bus was insured with the Oriental Fire and General Insurance Company Ltd. and the company is liable to pay the compensation upto the extent of Rs. 20,000/- against each passenger out of which a sum of Rs. 6,000/- had already been paid to the claimants. The U.P.S.R.T.C. also alleged that the driver of the vehicle was not rash and negligent in driving the vehicle. The accident occurred due to the vismajor. It was further alleged that the compensation claimed was exorbitant. The Insurance Co.-appellant filed the separate written statement in which the insurance Co. had claimed that the vehicle was not insured with the Insurance Co., as such, they are not liable to pay any amount towards the compensation.

The Tribunal after going through the pleadings of the parties, framed the necessary issues.

The learned Tribunal came to the conclusion that the accident was caused due to the rash and negligent driving of the bus and the accident did not occur due to the act of the God. It was further alleged that the age of the claimant was 45 years at the time of the accident and he was earning a sum of Rs. 225/- p.m. He was employed in a hotel. The learned Tribunal also held that the claimants were entitled to a sum of Rs. 30,240/- out of which the Insurance Co. was held liable to pay a sum of Rs. 20,000/-. The other respondents were held liable to pay a sum of Rs. 10,240/- severally and jointly.

Feeling aggrieved by the said judgment and award, the Insurance Company had preferred the appeal before this court which has been received on transfer from the Allahabad High Court.

The claimants and U.P.S.R.T.C. had not filed any appeal against the judgment and award of the Tribunal. The learned counsel for the Insurance Company had contended that the said offending bus was not insured with the Insurance Company u/s 95 and 96 of the Motor Vehicles Act, 1939 and no policy of insurance was issued to the appellant covering the accidental risk of the said offending bus. It was further contended that the learned trial court had erred in holding the responsibility of the appellant to pay a sum of Rs. 20,000/- without assigning any reason in its judgment. It was further contended that the learned trial court had not taken into consideration that the vehicle had not been insured with the appellant. The claimants had

examined Smt. Govindi Devi-PW1, Ram Singh-PW2 and Mahendra Pratap Singh-PW3 in this case and in rebuttal no evidence had been led by any of the opposite parties.

It is alleged in the written statement that the said vehicle was not insured with the appellant. The trial court had framed the issue to what compensation, if any, are the claimants entitled and from which of the opposite parties. While giving the findings on the issue Nos. 4, the Tribunal should have considered the plea of the appellant. The U.P.S.R.T.C. had not filed the copy of the insurance policy before the trial court and today their counsel is also not appearing before this court inspite of the notice. In absence of the policy, it cannot be held that the appellant was liable to pay the compensation. Perusal of the lower court's record reveals that the U.P.S.R.T.C. had not filed any evidence in support of his contention that the said vehicle was insured with the appellant and the appellant was liable to pay a sum of Rs. 20,000/- against each passenger. In absence of such findings, the appellant cannot be held to pay the compensation. The appellant could not be compelled to give the evidence of negative fact to prove that the insurance policy did not exist in this case. This factum had to be proved by the positive evidence of the U.P.S.R.T.C. In absence of such evidence, I am of the view that the appellant was not liable to pay any amount to the claimant. The entire amount was to be paid by the U.P.S.R.T.C.

It is also pertinent to mention here that the vehicle was being driven by the driver during the course of his employment with the U.P.S.R.T.C. The owner is liable for the act of the driver, as such, it is the liability of the U.P.S.R.T.C. to pay the entire amount of the compensation to the claimants.

The rate of interest as has been indicated in the impugned judgment and award needs no interference.

In view of the foregoing discussion, I come to the conclusion that the appeal is liable to be partly allowed and the impugned judgment and award passed by the Tribunal deserves to be modified to the extend that the claimants are entitled to get a compensation of Rs. 24,240/- from the U.P.S.R.T.C. The money already paid by the Insurance Company shall be paid to the company by the U.P.S.R.T.C. by way of execution.

Accordingly the appeal is partly allowed. The judgment and award dated 25.08.1982 passed by M.A.C.T./District Judge, Pithoragarh in Motor Accident Claim Case No. 2 of 1981 is modified upto the extent that the claimants are entitled to get a compensation of Rs. 24,240/- from the U.P.S.R.T.C. No order as to cost.

(J.C.S. RAWAT, J.)

20th July, 2006
Shiv